

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Biennial Regulatory Review-Amendment of )  
Parts 0, 1, 13, 22, 24, 27, 80, 87, 90, 95, 97, ) WT Docket No. 98-20  
and 101 of the Commission's Rules To )  
Facilitate the Development and Use of the )  
Universal Licensing System in the Wireless )  
Telecommunications Services ) FCC 98-25  
)  
Notice of Proposed Rulemaking )

To: The Commission

**TABLE OF CONTENTS AND SUMMARY OF  
COMMENTS OF THE COMMENTS OF THE  
FEDERAL COMMUNICATIONS BAR ASSOCIATION**

Summary.....	i
Overview.....	3
I. Any Electronic Filing System Must Retain A Mechanism By Which Applicants May Provide Additional Information To Insure That Their Applications Are Accurate And Complete.....	3
II. Applicants Must Have The Flexibility To Override Easily Any Automatic Data Entry System Developed With ULS.....	6
III. The Transition Period To Electronic Filing Proposed In The NPRM Is Insufficient.....	7
A. Additional Time Is Necessary To Work Out Inevitable Technical Problems In the System.....	7

No. of Copies rec'd  
List AB: OF

0410

B.	Many Wireless applicants and Licensees May Not Be Able To Handle Electronic Filing In The Very Short Period Of Time Proposed by the Commission.....	8
IV.	Significant Technical Issues Exist Requiring Clarification And/Or Modification To The ULS Before Implementation.....	10
A.	The FCC Must Afford Licensees Significant Time To Review and Correct Existing Database Records.....	10
B.	The Commission Should Allow World Wide Web Access To The ULS.....	11
C.	The FCC Must Allow Flexible Access To The Application Review Portion Of The ULS.....	13
D.	Preserving The Integrity Of The ULS Requires Additional Safeguards.....	14
1.	The FCC Should Give Applicants And Licensees The Option Of Requiring User Names And Passwords As An Additional Barrier To Unauthorized ULS Access.....	14
2.	Access To Draft Applications Must Be Barred.....	15
3.	The FCC Must Clarify What Technical Problems It Has Adopted To Back Up ULS Database Information.....	16
E.	The FCC Must Supply More Information Concerning Batch Filing.....	16
V.	The FCC Should Clarify And/Or Modify Certain Aspects Of Its Proposed Electronic Filing System.....	17
A.	The FCC Should Clarify Certain Aspects Of Proposed Form 601.....	17
B.	Safeguards Are Needed To Prevent Abuse Of The Proposed Electronic Signature Requirement.....	18
C.	The FCBA Supports The Commission's Proposals With Respect To Returned And Defective Applications And Treatment of Confidential Filings.....	19

D.	The FCC Must Clarify The Status Of The Map Filing Requirements For Cellular Licensees.....	21
VI.	The FCBA Supports The FCC's Proposals With Respect To Licensing And Technical Data.....	21
A.	The FCBA Supports The Commission's Efforts To Minimize The Technical Data Reporting Burdens Of Geographic Area Licensees.....	21
B.	The FCBA Supports The Commission's Proposed Use Of Notification/Certification Filings In Lieu Of Informational Filings.....	22
C.	The FCBA Supports The Proposed Elimination Of Technical Antenna Information For Public Mobile Radio Service and Fixed Microwave Service Licensees.....	22
VII.	The Commission Should Not Require The Mandatory Electronic Filing Of Pleadings And Should Not Disallow Letter Filings .....	24
VIII.	The Commission's Proposed Standards For Defining Major And Minor Amendments Should Be Modified To Reflect The Distinctive Qualities Of Different Services.....	25
IX.	The Commission's Proposed Collection Of Ownership Information Is Overboard And Unduly Burdensome.....	28
A.	FCC Form 602 Seeks Displeasure Of Information Not Related To Ownership Or Control.....	28
B.	The Commission Should Request Taxpayer Identification Number Information Only From Licensees Or Applicants.....	29
C.	The Format Of Proposed Form 602 Creates Substantial Administrative Burdens.....	31
X.	The Commission Should Clarify Aspects Of Its Proposed Transfer And Assignment Forms.....	32
XI.	Additional Issues.....	37
A.	Frequency Coordination Of Amendment And Modification Applications.....	37

B.	Returns And Dismissals Of Incomplete And Defective Applications.....	38
C.	Procedures Regarding Reinstatement Applications.....	39
D.	Construction And Coverage Verification.....	40
E.	Change To NAD-83 Datum.....	42
Conclusion.....		42

## Summary

The Federal Communications Bar Association ("FCBA") supports the FCC's proposed Universal Licensing System ("ULS") for wireless filings, but believes that the inevitable difficulty and complexity of the process necessitates a longer transition period, namely 1-2 years, than the six months contemplated in the NPRM, during which applications may still be filed in paper form.

Also, the ULS system must provide flexibility for applicants to provide additional information to the FCC in the form of written exhibits which explain in necessary detail issues which cannot be fitted into the format of an application.

Prior to the implementation of the ULS, the FCC must resolve serious issues, including the upgrade of existing FCC databases, worldwide web access to the ULS, and insuring the integrity of the ULS. The Commission should also clarify and/or modify certain aspects of the ULS, including changing unclear questions in proposed Form 601, clarifying its map submission requirements and preventing abuses of the proposed signature requirements.

The FCBA supports the FCC's proposals to modify the FCC's requirements with respect to the collection of technical data in applications.

However, while encouraging the electronic filing of pleadings and letters the FCC should continue to allow applicants and other filers to file such documents manually for the foreseeable future.

The FCC's proposed standards for defining major and minor amendments fail to take account adequately of the different qualities of different wireless services and the rules would make too many changes in wireless facilities which are considered minor under present rules major in nature.

Further, the FCC's proposed collection of information in its new ownership form, Form 602, is unduly burdensome, particularly with respect to its requirements that ownership information be provided for holders of debt and that taxpayer identification numbers be provided for all directors of licensees and parent corporations.

The FCC should also clarify its proposed assignment and transfer forms, Form 603 and 604, to ensure that licensees in different radio services may supply only the information relevant to their licensee qualifications.

Finally, the FCC should adapt its frequency coordination requirements to the ULS, should continue to allow applicants to correct application errors for 30 days after filing and should not discontinue its practice of allowing applicants who have provided good service to seek license reinstatement if they fail to file timely license renewals or construction verification notices through an inadvertent error. Finally, the FCC should update all its records to reflect one geographic datum, preferably NAD-83.

In conclusion, The FCC should "proceed with caution" in implementing the most revolutionary change in its licensing procedures in history.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)
	)
Biennial Regulatory Review-Amendment of	)
Parts 0, 1, 13, 22, 24, 27, 80, 87, 90, 95, 97,	) WT Docket No. 98-20
and 101 of the Commission's Rules To	)
Facilitate the Development and Use of the	)
Universal Licensing System in the Wireless	)
Telecommunications Services	) FCC 98-25
	)
Notice of Proposed Rulemaking	)
To: The Commission	

**COMMENTS OF THE FEDERAL  
COMMUNICATIONS BAR ASSOCIATION**

The Federal Communications Bar Association ("FCBA")<sup>1</sup> hereby files its Comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>2</sup>

---

<sup>1</sup> The FCBA is a non-profit, non-stock corporation organized under the laws of the District of Columbia, and has been in existence since 1936. The FCBA's membership consists of over 3,100 attorneys and other professionals involved in the development, interpretation and practice of communications law and policy. These Comments were prepared by a task force under the direction of the FCBA's Wireless Telecommunications Practice Committee and approved by the FCBA's Executive Committee, its elected board of directors. As in the case of other comments filed on behalf of the FCBA, the views expressed in these Comments do not necessarily reflect the views of each and every FCBA member. No FCBA members who are employees of the FCC participated in the preparation of these Comments. In addition, one member of the Executive Committee, who is an employee of the FCC, did not participate in the Committee's discussion or consideration of these Comments or in the vote to authorize their filing.

<sup>2</sup> *Biennial Regulatory Review - Amendment of Parts 9, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of Universal Licensing System in the Wireless Telecommunications Services,*

The Commission's Notice of Proposed Rulemaking ("NPRM") in the instant proceeding has proposed profound changes in the Commission's long standing application preparation and submission processes for wireless licensees. Specifically, the FCC proposes to consolidate 41 existing application forms into five new electronic forms and consolidate most wireless processing rules in one rule part, Part 1.

In response to the NPRM the FCBA, under the auspices of its Wireless Telecommunications Practice Committee, assembled a task force comprised of attorneys representing a wide variety of wireless licensees in different radio services to review the proposed new rules, forms and electronic filing procedures. The FCBA commends the FCC's herculean effort to make the filing of applications easier and to make FCC records instantaneously available. It is our intention in the following comments to offer practical suggestions on how the new rules may be improved. Our comments are offered in a spirit of respect and support for what the FCC is trying to accomplish.

It is inevitable that such far reaching efforts be very difficult to implement and will generate many problems, some of which cannot be foreseen. Therefore the FCBA believes that a slower transition period than the one envisaged in the NPRM is warranted. The FCBA stands ready to provide assistance in achieving the smoothest possible transition and work with the FCC to resolve the issues addressed herein. We would also state at the outset that we have no experience with ULS and hence our comments and proposals are inevitably tentative in nature. We will ask Commission consent to comment again on these matters when ULS has begun to be implemented and the FCC, the FCBA and FCC licensees gain experience with it.

---

WT Docket No. 98-20, FCC 98-25, Notice of Proposed Rulemaking ("NPRM") (rel. March 18, 1998).



## OVERVIEW

The FCBA applauds the Commission's proposal to streamline and simplify the application process and the forms used in connection with wireless authorizations. It also fully supports the proposal to increase the use of electronic filing processes and the Commission's efforts to develop a Universal Licensing System ("ULS"). As the Commission notes in its NPRM, use of a universal licensing system and electronic filing will enhance the Commission's ability to collect reliable and accurate information and facilitate the filing and processing of applications.

At the same time, however, the FCBA believes that any licensing system which replaces the current manual system must retain the flexibility to allow applicants and others to provide the Commission with complete and accurate information and that the automatic data entry systems employed by the Commission as part of the ULS must permit applicants to override the automatic data entry system where necessary. In addition, the FCBA believes that a 1999 deadline for initiating electronic filings of all wireless applications is ill advised. That timetable simply will not be sufficient to work out the inevitable "bugs" which infect computer systems. Moreover, many licensees, especially in the wireless industry, lack the computer sophistication necessary to employ an electronic filing system and thus would be severely prejudiced by such a short transition. Finally, the FCBA is concerned whether the Commission has adequate procedures to deal with the risks of the Commission's computer system going down, data being lost or the networks used to access the Commission's databases failing at a critical moment.

### **I. Any Electronic Filing System Must Retain A Mechanism By Which Applicants May Provide Additional Information To Insure That Their Applications Are Accurate and Complete**

The FCBA is concerned that the electronic forms do not provide a means for applicants to

submit additional clarifying information in response to questions which request a yes or no answer. The members of the FCBA are acutely aware that there are frequently circumstances in which the response to a specific question may not be a simple "yes" or "no," but may require an explanation. For example, ownership information may not fit into the various categories the Commission has established, especially where new financing vehicles are created or new forms of business are developed--such as the limited liability company or the limited liability partnership--or where parties have options or rights contingent on subsequent events. Questions concerning claims against the applicant or the extent of foreign ownership or interlocking directorates can pose similar difficulties. In these circumstances, neither "yes" nor "no" is an accurate and complete response and in some cases, one response could be disqualifying while the other response will subject the applicant to a charge of lack of candor.

This problem cannot be addressed by more careful or precise phrasing of application questions. No matter how creative and farsighted the Commission may be, it cannot foresee the range of factual circumstances which might arise to permit an application question to be phrased in way that will always permit a simple "yes" or "no" answer to always suffice. Nor can the Commission anticipate in application questions rule changes which may be adopted in the future that may affect the way in which questions can be answered. Further, the impact of these subsequent rule changes on the questions in the forms may not always be "picked up" when rules are changed. Similarly, the Commission's rules may not cover a particular situation and an applicant may not wish to seek a waiver of the rules when one interpretation of the rule would permit what is proposed while another would not. Under the current manual filing system, an applicant can either answer an application question "yes" or "no" and include an explanatory exhibit or it can merely submit an

explanatory exhibit without answering an application question "yes" or "no. The draft forms attached to the NPRM do not provide for any such explanatory material.

The inability to include this additional and necessary information is a fundamental defect in the ULS proposal preventing applicants from answering application questions with complete candor. As the Commission is aware, a fundamental precept of its rules is that licensees and applicants deal with the Commission truthfully and accurately. Indeed, the Commission imposes the most severe sanctions - license or application denial - where an applicant lacks candor by answering the precise question posed, but nevertheless gives the wrong impression.<sup>3</sup>

Thus, applicants must have the opportunity to provide additional information where factual circumstances require it. While the FCBA recognizes that electronic filing systems may dictate some greater rigidity than a manual system in order to accommodate data processing requirements, the efficiencies which electronic filing offers cannot override the importance of assuring that the Commission has sufficient and complete information to make an informed decision whether grant of an application will serve the public interest. That is the touchstone of the Commission's regulatory responsibility and must ultimately control any licensing system the Commission may develop.<sup>4</sup>

---

<sup>3</sup> See, *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1221 (D.C. Cir. 1994) ("Lack of candor . . . exists when an applicant breaches its 'duty to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or nor such information is particularly elicited,'" quoting *Silver Star Communications - Albany, Inc.*, 3 FCC Rcd. 6342, 6349 (Rev. Bd. 1988) (emphasis added)). See also *Fox River Broadcasting, Inc.*, 93 FCC 2d 127 (1983).

<sup>4</sup> *U.S. v. Storer Broadcasting Co.* 351 U.S. 192 (1956); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

## **II. Applicants Must Have The Flexibility To Override Easily Any Automatic Data Entry System Developed With ULS**

In its NPRM, the Commission proposes to program the ULS so that ownership information and other information already in the Commission's database will automatically be inserted in applications. The benefits of this proposal are set forth persuasively in the NPRM, and the FCBA supports the proposal in concept. However, it is concerned about how the proposal is implemented and, specifically, whether applicants will be able to correct the data entered automatically when those data are incorrect, either because the applicant failed to advise the Commission of a change or because the data in the Commission's files are inaccurate.

We have all dealt with computer programs that dictate the manner in which material is input and require that data be included in certain fields in order to proceed with completing the form or whatever document on which one is working. Working with those programs can be frustrating when the program will not let one control the document or the information being input. The automatic data entry proposed by the Commission poses a similar risk – an applicant may not be able to change the data because the program will not allow it, even though the data are inaccurate. Alternatively, correcting the data may require, because of the particular manner in which ULS is programmed, the filing of additional forms and the use of a circuitous route, which will be cumbersome and difficult, particularly for those who are not computer literate.

The FCBA urges the Commission to ensure that applicants can correct the automatic data input into the forms in as direct and straightforward manner as possible. Requiring the submission of additional forms and paying additional filing fees to correct incorrect data can severely prejudice an applicant's rights, particularly where a filing deadline is involved. While assuring that applicants

have this flexibility may complicate the ULS programming system, the ability to correct that data easily is essential if the ULS system is to minimize filing requirements, streamline the application process and reduce the burdens on applicants and the Commission.

### **III. The Transition Period To Electronic Filing Proposed In The NPRM Is Insufficient**

The FCBA believes that the proposal to require electronic filing by January 1, 1999 is unrealistic and will not permit sufficient time to work out the inevitable bugs that will affect any new software program, including the ULS. In addition, it is concerned that the short transition will prejudice the interests of smaller wireless applicants and licensees.

#### **A. Additional Time Is Necessary to Work Out the Inevitable Technical Problems In The System**

The FCBA is concerned that the very short transition period proposed by the Commission – less than six months – will not permit the Commission to identify and work out the technical problems which inevitably will be found in the ULS. As the Commission is aware, computer programs often have glitches and bugs which take time to identify and often more time to solve. The problem is endemic to the industry and even such giants as Microsoft have experienced problems after the release of software. There is no reason to believe that the ULS will be immune from this phenomenon.

In order to discover and remedy any technical problems which may arise the Commission should first institute a "beta testing" program with licensee volunteers, which would bring to light potential problems and help accelerate their resolution.

Also, in order to deal with this practical reality, the FCBA believes that the Commission should encourage wireless applicants to use the electronic filing system but should not require that

applications be filed electronically until it has substantially more experience with the ULS. By comparison, Commission phased in electronic filing over a period of years in connection with wireless auctions and the applications involved in those proceedings were more uniform in nature than the wide range of applications which the ULS encompasses. Even so, the FCC experienced technical problems and carriers encountered difficulties in auction electronic filing efforts. Indeed, as the Commission notes in the NPRM, it currently uses 41 application forms for wireless services. It is likely that the problems that will arise in attempting not only to use an electronic filing system for applications but also in harmonizing the applications into four or five application forms. Those problems are likely to be substantially greater than those associated with using electronic filing for auction applications. A multi-year transition will permit the Commission to work out the unforeseen difficulties in its programs. It will also permit it to adapt those programs to the unique needs of the smaller wireless entities which may now lack the computer sophistication needed to deal with an electronic filing system.

**B. Many Wireless Applicants and Licensees May Not Be Able to Handle Electronic Filing In The Very Short Period of Time Proposed By The Commission**

As the Commission noted its NPRM, many wireless applicants may not have the computer capability or sophistication to use the electronic data system properly. The FCBA is concerned that these applicants will not be able to adapt to an electronic filing system within the six months the FCC has proposed for the transition.

While the Commission has done an excellent job of bringing its processes into the computer age and in making access to its forms, databases and information available via computer, using the Commission's databases and other information sources is not always easy, even for those with

computer skills. For example, users of the Commission's auction databases have experienced significant delays and have experienced significant difficulties downloading forms or engineering information from the Commission's databases. In some cases, particularized programs were required and, even where the program was successfully downloaded, novice users have in many instances been unable to install or use a given program. In other cases, the amount of data being downloaded has overloaded the memory of the computer being used due to the Commission's software design.

As the Commission recognized in its NPRM, many wireless applicants and licensees are small businesses, and many lack computers capable of accessing and working with the Commission's computer systems. In other cases, the individuals who run wireless companies are not sufficiently computer-literate to use the programs to complete the applications electronically. Indeed, as noted below, the Commission is in many cases requiring applicants to submit more, rather than less, data, and these smaller entities may not be in a position to: (a) provide that information; (b) understand the application requirements and (c) complete an electronic form. Thus, requiring these licensees and applicants to use electronic filing systems within six months will not simplify the application process or make the Commission more accessible. Rather, it will have the opposite effect.

Consequently, the FCBA believes that the Commission should provide for a much longer transition period - on the order of one to two years - before making electronic filing of application forms mandatory.

Also, the FCC should explicitly state that even after the transition period has expired, that it retains and will exercise the necessary waiver authority to permit paper filing of applications in emergency or very unusual circumstances.

#### **IV. Significant Technical Issues Exist Requiring Clarification and/or Modification to the ULS Before Implementation.**

The NPRM proposes nothing less than a sweeping transformation of the Commission's wireless license application and processing procedures. Perhaps the most significant aspect of the Commission's NPRM is the proposal to transition from a paper to an electronic filing regime. While the FCBA believes that this transition will ultimately prove to be beneficial for applicants, members of the public, as well as Commission staff, it is equally certain that deployment of the ULS — as with any new computer system — will result in a myriad of technical problems that have yet to be fully anticipated by the Commission or the bar. Accordingly, the FCBA urges the Commission to respond now to the technical difficulties likely to be encountered by all users of the ULS. Toward this end, the FCBA has identified the following technical issues that raise concern from the outset.

##### **A. The FCC Must Afford Licensees Significant Time to Review and Correct Existing Database Records.**

As a necessary precursor to electronic filing, the Commission proposes to upload its existing database records into the ULS. These database records, which reflect, conservatively, hundreds of thousands of applications filed over the years, will thereafter become the responsibility of applicants and licensees to maintain. Specifically, whereas the Commission's existing database records have largely been compiled by Commission staff entering data supplied by applicants on paper application forms, the ULS contemplates a filing regime in which applicants will input data directly into the Commission's database records whenever an application is electronically-filed. It is essential that the data currently resident in the Commission's data bases be carefully reviewed. The FCBA urges the Commission to afford applicants and licensees sufficient time to verify the accuracy of existing records before the ULS becomes operational.



Specifically, the FCBA requests that as part of this data verification process, the Commission adopt specific, reasonably flexible procedures for licensees to correct errant data. Specifically the FCC should establish a program of scheduled review of databases by licensees modeled on the tower inventory and registration program of the past two years.

Rather than compounding the errors and inaccuracies that have understandably worked their way into existing database records over the years, the Commission should take advantage of the opportunity that implementation of the ULS affords to allow licensees thoroughly to review the Commission's records. Accordingly, the FCBA requests that as the Commission phases in the ULS on a service-by-service basis, it make its existing database records available for licensee inspection and correction. Obviously, the best way to ensure greater accuracy in the Commission's database records as the transition to electronic filing moves forward is to ensure the accuracy of the data with which the Commission proposes to initially populate the ULS. The phased review process described above will facilitate this task.

#### **B. The Commission Should Allow World Wide Web Access to the ULS**

As described in the NPRM, users will access the ULS by means of a point-to-point protocol ("PPP") connection to the Commission's wide area network.<sup>5</sup> Once a connection is established, users will navigate through the menu screens of the ULS using a commercially available Internet web browser.

The FCBA strongly supports the Commission's decision to utilize web-browser technology and software. Web browsers are in wide use, will be familiar to many applicants, and are fully supported by computer network vendors and systems personnel. In addition, today's modern web

---

<sup>5</sup>NPRM at n.2.

browsers support data encryption and other protective features that allow the secure transmission of credit card numbers and other sensitive information over the Internet. The FCBA questions, therefore, why the Commission is proposing to allow access to the ULS only by means of PPP connections. Indeed, given the fact that the ULS is designed to work in conjunction with standard Internet web browser software, it would seem logical to allow applicants direct access to the ULS by means of a World Wide Web connection. This is especially true given the difficulty that FCBA members have experienced using various types of Commission-developed software utilizing PPP connection technology.

One of the principal shortcomings of the Commission's PPP connection strategy is the fact that the Winsock<sup>6</sup> files contained in the Commission's various software packages routinely conflict with one another as well as with the Winsock files used by other programs — particularly those Winsock files used to establish connections between an office network and an Internet service provider. As a result of these conflicts, it is generally impossible to establish a PPP connection with the Commission from a personal computer currently connected to an office network. In order to correct this problem, callers to the FCC's Internet helpline have been instructed to temporarily rename Winsock files, and to operate the computer in a stand-alone, non-networked mode. Unfortunately, this solution makes it impossible to print to networked printers, is otherwise cumbersome and often prohibitively complicated for many users, and is next to impossible to achieve when certain configurations of Windows 95 are in use.

---

<sup>6</sup>A Winsock file is a computer file containing a telephone number and other instructions needed to establish a PPP connection with a remote site.

Again, the obvious solution to these problems is to simply make the ULS directly accessible via the World Wide Web. The Commission's great success with its own web site, as well as the millions of vendors who daily use the Internet to conduct business transactions of all kinds, certainly supports the notion that the Internet is a viable means for successfully and securely transmitting data from site to site, across multi-vendor infrastructure. Indeed, one of the great successes of the Internet is to greatly simplify the challenges of interoperability. While the FCBA believes that the PPP connection technology proposed in the NPRM will work well for many users, allowing users the option of connecting to the ULS by means of the World Wide Web will enhance its flexibility and ultimately its success.

**C. The FCC Must Allow Flexible Access to the Application Review Portion of the ULS.**

The FCBA strongly supports the Commission's proposal to allow free access to the application filing portion of the ULS. With respect to the application review portion of the ULS, however, the FCBA urges the Commission to consider alternative means of collecting reimbursement from users other than dial-up toll access, and strongly supports suggestions by Commission staff at recent public ULS seminars that significant reductions of the per minute usage charge are under consideration.

As indicated above, the FCBA requests that World Wide Web access be allowed to the ULS in addition to the PPP access as proposed in the NPRM. The FCBA notes that an additional advantage of web access is that it would allow users to pay for access charges to the application review portion of the ULS by means of credit card. In addition, the FCBA urges the Commission to consider allowing heavy users of the application review portion of the ULS to obtain subscription

accounts, perhaps on a monthly basis, and perhaps at a fixed, flat rate. This option should also include a data input field allowing users to specify client charge or other referencing information so that users are better able to track and properly apportion access charges as they occur.

Finally, the FCBA notes that many of its members have experienced considerable difficulty successfully accessing the Commission's dial-up toll database access services. For example, members who recently attempted to download all of the Form 175 filings made in connection with the recent LMDS auction experienced lengthy download times (approximately three hours for all Forms 175) only to discover that the Commission's download protocol was designed to write all of the file information to random access memory ("RAM") before saving it to disk as instructed. As a result, members expended considerable personnel hours and incurred access charges only to experience complete technical failure once all available RAM was consumed in the download process. Fortunately, Commission staff have informally indicated that they will work with users experiencing these problems to obtain access charge credits and/or refunds. Nevertheless, the FCBA believes that experiences like these underscore the need for greater flexibility and accountability with respect to ULS access charges, as well specific procedures for obtaining credits and/or refunds when the ULS application review feature fails to successfully perform.

**D. Preserving the Integrity of the ULS Requires Additional Safeguards**

**1. FCC Should Give Applicants and Licensees Option of Requiring User Names and Passwords as an Additional Barrier to Unauthorized ULS Access.**

The NPRM proposes to require a taxpayer identification number ("TIN") or social security number ("SSN") and an associated password before a user can prepare, modify or file any

application through the ULS.<sup>7</sup> Obviously, the purpose of this procedure is to prevent the unauthorized filing of applications and other license-related materials since, as discussed below, electronic filings will not require original signatures. Unfortunately, the obvious downside to this procedure is that it requires applicants to carefully control access to its TINs/SSNs and associated passwords; this will be particularly troublesome to applicants and licensees who routinely use numerous employees and outside counsel, at disparate locations, to prepare and finalize license application materials. In order to better control access to the application filing section of the ULS, the FCBA requests that the FCC give licensees and applicants the option of requiring user names and user passwords in addition to TINs, SSNs and associated passwords. Further, the FCBA requests that this option be equipped with a capability to monitor and record the user name of the individual submitting a given application. This option will allow applicants to continually control access to their applications, as well as to prevent access by persons who may have had access to the applicant's TIN/SSN and password previously, but who are no longer authorized to prepare or submit such filings, because, for example they have been discharged. In connection with this option, applicants should have the option of easily authorizing and authorizing specific user names.

## **2. Access to Draft Applications Must be Barred**

At a recent public seminar, members of the Commission's staff indicated that draft applications will not be accessible by the public, or the Commission, prior to electronic filing. It was also disclosed, however, that the design of the ULS results in draft applications being stored on the Commission's database until they are filed or deleted. The FCBA requests clarification on this matter. Specifically, the FCBA requests that the Commission disclose the nature of the safeguards

---

<sup>7</sup>NPRM at ¶¶ 73-74.

it has implemented to prevent unauthorized access (either by Commission staff or the public) to draft applications. The FCBA notes that under the Commission's existing manual filing regime, applications are routinely prepared, but never filed, for transactions that are ultimately abandoned by applicants for any number of commercially-sensitive reasons. Indeed, the mere existence of a draft application could potentially disclose commercially sensitive information as well as raise insider trading concerns. Accordingly, the FCBA requests Commission clarification that draft ULS applications will not be accessible by anyone, and that applicants will have the ability to completely delete an application draft they no longer wish to pursue.

**3. The FCC Must Clarify What Technical Procedures it has Adopted to Backup ULS Database Information.**

One of the key components of the ULS envisioned by the NPRM is the creation of a single, unified technological platform and database. The FCBA trusts that the Commission's planned conversion to the ULS includes commercially-reasonable procedures to protect the ULS, particularly its database records, in the event of catastrophic failure or disaster. The FCBA notes, for example, that as recently as a few years ago, many thousands of license application records were destroyed when the Commission's Gettysburg facility experienced a flood emergency. Accordingly, the FCBA respectfully requests that the Commission institute and then disclose backup procedures to prevent the loss of database information in the event that ULS hardware is damaged in a catastrophic event.

**E. The FCC Must Supply More Information Concerning Batch Filing**

As described in the NPRM, users of the interactive filing portion of the ULS will have the option of compiling and submitting application data to the Commission by completing one of five new electronic forms. In addition, however, the NPRM briefly mentions that the Commission

intends to support batch filing access to the ULS. The FCBA supports this plan. Applicants and licensees with large scale filing requirements have had good experiences using batch filing methods to submit voluminous antenna structure registration materials, and are sure to make similar good use of batch filing in connection with the ULS. In support of batch filing, the FCBA recommends, however, that the Commission publicly disclose the formatting requirements as quickly as possible so that applicants and licensees can make necessary computer preparations to utilize batch filing before the ULS comes on-line.

**V. The FCC Should Clarify and/or Modify Certain Aspects of its Proposed Electronic Filing System.**

**A. The FCC Should Clarify Certain Aspects of Proposed Form 601**

Certain aspects of the proposed Form 601 should be clarified before it is substituted for the forms it will replace.

**Ownership Information**

First, Question 12 of the form requests the name of the "real party in interest of applicant" and the form's instructions for that question refer to new "Section 1.917" of the Commission's Rules.

In the first instance, it is questionable whether this form needs to elicit any ownership information from an applicant, assuming that the applicant has a current Form 602 on file. Second, it is not clear what "real party in interest" information is required, since, contrary to the form's instructions, new Section 1.917 of the FCC's Rules does not mention any "real party in interest" requirements, but rather deals with signatures.

The Commission, in our view, ought to make clear that applicants need not report in every major modification application minor changes in ownership not affecting control of such applicants. It would be preferable to have a yearly ownership reporting requirement or require reporting of such changes only when a transfer or assignment application is filed than to place applicants in constant uncertainty as to when minor changes in ownership have to be reported.

#### **Contact Information**

Also, in Form 601, it is ambiguous whether and how easily applicants may designate a non-employee as the contact person for an application. Questions 9-23 seem to require an applicant contact but Questions 24-33 provide for a non-employee contact if desired. The Commission should amend the form so applicants may clearly designate a specific person, whether employee or non-employee to whom inquiries may be directed.

#### **Alien Ownership Information**

The FCBA also questions the need for Questions 40-44, dealing with alien ownership issues. Before licenses can be granted, applicants must meet these requirements. Any change in ownership causing those representations to become untrue would require reporting to the FCC and, in all likelihood, a transfer of control or assignment application. Inserting such reporting requirements in every application defeats the purpose of having electronically stored information.

#### **B. Safeguards are Needed to Prevent Abuse of the Proposed Electronic Signature Requirement**

In order to fully implement the ULS, the Commission is proposing to amend its application signature requirements to allow for electronic filing.<sup>8</sup> Specifically, the Commission is proposing to

---

<sup>8</sup>47 C.F.R. 1.917(d)(as proposed).



allow applicants to complete the signature requirement for applications filed electronically by typing the name of the person authorizing the application in the signature block.<sup>9</sup> Indeed, other than requiring applicants to scan original signatures into an electronic filing, the Commission's proposal is the only logical way to preserve a signature requirement in an electronic filing environment. Accordingly, the FCBA supports the Commission's amended signature rule as a necessary component of an electronic filing system.

Nevertheless, the FCBA is concerned that absent some more formalized means of applicant authorization, the Commission's electronic signature provision may unfortunately invite disingenuous claims of unauthorized filings by applicants, who in retrospect, are dissatisfied with the contents of their electronically-filed applications — particularly where those applications were filed by third parties on their behalf. In order to provide a safeguard for this potential difficulty, the FCBA recommends that the Commission might amend its proposed rule (Section 1.917) providing that those who "sign" applications electronically are considered to be authorizing their agents, including outside counsel, to file such applications on their behalf. The FCC does not wish to be in a position of adjudicating disputes between filers and their agents concerning whether filings were "authorized."

**C. The FCBA Supports the Commission's Proposals With Respect to Returned and Defective Applications and Treatment of Confidential Filings**

The NPRM proposes to conform its existing filing rules "for all WTB applicants so that batch, interactive, and, where applicable, manual filers, will be subject to the same requirements and

---

<sup>9</sup>*Id.*